

NOT FOR CITATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re: CONE ENGINEERING
CONTRACTORS, Inc., a California
Corporation,

C 05-2137 PJH

Debtor/Appellant.

**ORDER DENYING REQUEST
FOR EXTENSION OF TIME
TO FILE OPENING BRIEF**

Debtor/Appellant filed this bankruptcy appeal on May 24, 2005, appealing the bankruptcy court's allowance of appellee, the State Compensation Insurance Fund's claims. Appellant's opening brief was originally due no later than July 13, 2005. This court subsequently signed three stipulations to extend the time for appellant to file its opening brief. On September 6, 2005, this court issued an order to show cause because appellant failed to file its brief pursuant to the third stipulated and court-ordered deadline. Appellant responded with its fourth stipulated request for an extension of time, which this court granted on September 15, 2005, but admonished the parties that it would grant no further extensions. Pursuant to that order, appellant's brief was due October 10, 2005.

Appellant again failed to file the brief; and, on October 14, 2005, filed with this court a letter explaining why it "did not intend to file its brief due in connection with the appeal." Appellant notified this court that it had settled its claim with appellee, and is awaiting bankruptcy court approval. This court advised appellant that the letter was insufficient to extend the court-ordered deadline.

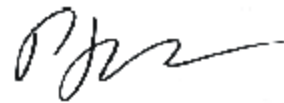
1 Appellant now submits its fifth extension of time to file its opening brief. Appellant
2 contends that it is awaiting bankruptcy court approval of the settlement. However, appellant
3 did not specify a bankruptcy court hearing date or other deadline by which it intends to receive
4 such bankruptcy court approval. Moreover, a review of the bankruptcy court's docket,
5 bankruptcy case no. 02-45803, reveals that there is currently no set hearing date.
6 Furthermore, this court questions whether the bankruptcy court even retains jurisdiction to
7 approve such settlement of claims currently before this court on appeal.

8 Nevertheless, the court denies the instant stipulated request for an extension because it
9 is in clear contradiction of this court's order that there would be no further extensions of the
10 briefing schedule. Appellant has received four extensions, all based on the same alleged
11 good cause – that it intends to settle its claims with appellee before the bankruptcy court.
12 While the parties are commended for their attempts to settle the issues, this appeal cannot
13 continue indefinitely without compliance with the court-ordered briefing schedule.

14 Accordingly, appellant's fifth request for an extension of time to file its opening brief is
15 DENIED. Appellant shall file and serve its opening brief no later than **ten days** from the date
16 of this court's order. If appellant fails to do so, the appeal shall be dismissed for failure to
17 prosecute pursuant to Federal Rule of Bankruptcy Procedure 8001(a).

18 **IT IS SO ORDERED.**

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21 Dated: October 24, 2005



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PHYLLIS J. HAMILTON
23 United States District Judge
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